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APR 11 1930

IN THE

SUPREME COURT OF THE UNITED STATES

POWERS-KENNEDY CONTRACTING CORPORATION and ANTHONY G. FLECK,
Defendants-Petitioners,
vs.
CONCRETE MIXING & CONVEYING COMPANY.
Plaintiff-Respondent.

No. ~~501~~ 3

CONCRETE MIXING & CONVEYING COMPANY (a Corporation),
Plaintiff-Petitioner,
vs.
R. C. STORRIE & COMPANY (a Partnership),
Defendants-Respondents.

No. ~~528~~ 4

OCTOBER TERM,

MOTION TO ADVANCE FOR RE-ARGUMENT.

LYNN A. WILLIAMS,
STEPHEN J. COX,
Solicitors for Concrete Mixing & Conveying Company.

Eastman Bros., Inc., Law Printers, 542 S. Dearborn St., Chicago.

IN THE

SUPREME COURT OF THE UNITED STATES

POWERS-KENNEDY CONTRACTING CORPORATION and ANTHONY G. FLECK, Defendants-Petitioners, vs. **CONCRETE MIXING & CONVEYING COMPANY,** Plaintiff-Respondent.	**No. 501.**
CONCRETE MIXING & CONVEYING COMPANY (a Corporation), Plaintiff-Petitioner, vs. **R. C. STORRIE & COMPANY (a Partnership),** Defendants-Respondents.	**No. 528.**

MOTION TO ADVANCE FOR RE-ARGUMENT.

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

And now comes Concrete Mixing & Conveying Company, by its solicitors, and moves that the above entitled cases (which your Honors recently ordered restored to the docket for re-argument) be advanced for re-argument at the session of this court beginning April 14, 1930.

These cases were argued together in this court on April 16 and 17, 1929.

Both cases involve the validity of letters patent to McMichael No. 1,127,660. The patent covers a means (method and apparatus) which is used, practically to the exclusion of all other means, for placing concrete linings in tunnels and subways. **The patent will expire in approximately twenty-two months, i. e., on February 9, 1932.**

The income of Concrete Mixing & Conveying Company is derived entirely from royalties or rentals paid by parties who practice the method of the patent and utilize the machines of the patent as furnished by Concrete Mixing & Conveying Company and its principal licensee, Ransome Concrete Machinery Company. Moreover, a very large and important part of the business of Ransome Concrete Machinery Company consists in the manufacture, distribution and leasing of the patented machines.

The utility and merit of the method and machine of the McMichael patent are now generally recognized and the same are in widespread use at the beginning of the last two years of the life of the patent. It is, therefore, imperative, from the standpoint of Concrete Mixing & Conveying Company and its licensee, Ransome Concrete Machinery Company, that your Honors pass upon the validity of the patent before very many of the remaining twenty-two months of its term have elapsed.

It has been and is necessary for Concrete Mixing & Conveying Company, in protecting itself against infringement of the McMichael patent, to proceed against *users* of the patented method and machine rather than against manufacturers of infringing machines. This is so because it is the users of such machines who derive greatest benefit and advantage from infringement, and

because the manufacturers of such machines are difficult to locate and almost invariably are financially irresponsible. The manufacturers of the machines in these cases alleged to infringe (and other parties as well) heretofore have sold or leased similar machines which have been used, in the practice of the patented method, by numerous contractors and construction companies throughout the United States. The statute of limitations is running against the causes of action for infringement which have thus arisen. In a great many of these situations (all of which will be controlled by your Honors' decision in the present cases) the statute of limitations will have run completely within the next six months.

Among the many instances of unlicensed use of the McMichael method and apparatus against which the statute of limitations will become effective within the next six months (as to all or a large part of the work performed) are the following:

The lining with concrete, by or for Southern California Edison Company of Los Angeles, California, of one 14 mile tunnel; one 10 mile tunnel; one 8 mile tunnel and two 3 mile tunnels—all located in the State of California.

The lining with concrete, by or for East Bay Water Company of Oakland, California (Bates & Borland of Oakland, California, contractors) of a tunnel (7150 feet) at Redwood Canyon, California.

The lining with concrete, by or for the City of Providence, Rhode Island, of the "Scituate" tunnel (Keystone State Construction Company of Philadelphia, Pennsylvania, contractor) of a water supply tunnel in which approximately 20,400 cubic yards of concrete were placed.

The lining with concrete, by or for Pacific Gas &

Electric Company of San Francisco, California, of a tunnel at Pitt River, California, the tunnel being approximately 2100 ft. long and 19 ft. in diameter.

The lining with concrete, by or for the City of Los Angeles, California, of an outfall sewer, in which approximately 18,000 cubic yards of concrete were placed.

The lining with concrete, by or for California-Oregon Power Co., of a tunnel approximately one mile in length, located at Copco, California.

The lining with concrete, by or for Portland Electric Power Company of Portland, Oregon (Hurley-Mason Co. of Portland, Oregon, contractor), of a tunnel approximately 3000 feet in length, located about 55 miles southeast of the City of Portland, Oregon.

The lining with concrete, by or for the City of Merced, California (F. Ralaudi of San Francisco, California, contractor), of four tunnels forming part of the Merced Irrigation District.

Unless these cases now pending in the Supreme Court are decided by your Honors within the next few months, Concrete Mixing & Conveying Company and its licensee, Ransome Concrete Machinery Company, will suffer irreparable loss and injury (even though your Honors ultimately agree with the Second Circuit Court of Appeals that the McMichael patent is valid) for the following reasons:

1. Unlicensed use of the patented invention (which has been on the increase while these cases have been pending in the Supreme Court) will continue to increase.

2. Concrete Mixing & Conveying Company and its licensee, Ransome Concrete Machinery Company, will be deprived of a very large part if not all of the profits and advantages which otherwise would flow to them dur-

ing the next twenty-two months by reason of their rights under the McMichael patent.

3. It will be necessary for Concrete Mixing & Conveying Company within the next few months to institute and maintain numerous suits in many different parts of the United States on causes of action against which the statute of limitations has nearly run,—suits which will be entirely controlled by your Honors' decision in the present cases.

Respectfully submitted,

LYNN A. WILLIAMS,
STEPHEN J. COX,
Solicitors for Concrete Mixing & Conveying Company.

State of Illinois, County of Cook, ss:

LYNN A. WILLIAMS, being duly sworn, deposes and says that he is of counsel for Concrete Mixing & Conveying Company, respondent in Case No. 501 and petitioner in Case No. 528, and that the facts stated in the foregoing motion are true to the best of his knowledge and belief.

LYNN A. WILLIAMS.

Subscribed and sworn to before me this 1st day of April, 1930.

GERTRUDE REINKE,
Notary Public.

[SEAL.]